



The Family and Medical Leave Act:
An Overview of Law and Policy

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Topics:

- Employer Coverage and Employee Eligibility
- Qualifying Reasons for Leave
- Amount of Leave
- Employer Rights and Responsibilities
- Employee Rights and Responsibilities
- Military Family Leave Provisions
- Review of State Policy Revisions

Employer Coverage

- Private sector employers with 50 or more employees
- **Public Agencies**
- Public and private elementary and secondary schools

Employee Eligibility

- Employed by a covered employer,
- Worked at least 12 months, and
- Have at least 1,250 hours of service during the 12 months before leave begins

Twelve Month Period

The method for determining the 12-month period is set by the agency. The possibilities include:

- Calendar year
- Any fixed 12-month leave year
- A 12-month period measured forward
- A rolling 12-month period measured backward

Qualifying Leave Reasons

Eligible employees may take FMLA leave:

- For the birth or placement of a child for adoption or foster care,
- To care for a spouse, son, daughter, or parent with a serious health condition,
- For their own serious health condition,

Qualifying Leave Reasons (cont.)

Eligible employees may take FMLA leave:

- Because of a qualifying reason arising out of the covered active duty status of a military member who is the employee's spouse, son, daughter, or parent (qualifying exigency leave), or
- To care for a military member with a serious injury or illness when the employee is the spouse, son, daughter, parent, or next of kin of the military member (military caregiver leave)

Qualifying Family Members

- **Parent** - A biological, adoptive, step or foster father or mother, or someone who stood *in loco parentis* to the employee when the employee was a son or daughter. Parent for FMLA purposes does not include in-laws.
- **Spouse** - A husband or wife as defined under state law.
- **Son or Daughter** - *For leave other than military family leave*, a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* who is either under 18 years of age, or 18 or older and incapable of self-care because of a mental or physical disability.

Qualifying Leave Reasons –
For the Birth or Placement of a Child

- Both the mother and father are entitled to FMLA leave for the birth or placement of the child and/or to be with the healthy child after the birth or placement (bonding time)
- Employees may take FMLA leave before the actual birth, placement or adoption
- Leave must be completed by the end of the 12-month period beginning on the date of the birth or placement

Qualifying Leave Reasons –
Serious Health Condition

Illness, injury, impairment or physical or mental condition involving:

- Inpatient Care, or
- Continuing Treatment by a Health Care Provider

Serious Health Condition –
Inpatient Care

- An overnight stay in a hospital, hospice, or residential medical facility
- Includes any related incapacity or subsequent treatment

Serious Health Condition –
Continuing Treatment

Continuing Treatment by a Health Care Provider includes:

- Incapacity Plus Treatment,
- Chronic Conditions,
- Pregnancy,
- Permanent/Long-term Conditions, and
- Absence to Receive Multiple Treatments.

Continuing Treatment by a Health Care Provider

Incapacity Plus Treatment

Incapacity of more than three consecutive, full calendar days that involves either:

- Treatment two times by HCP (first in-person visit within seven days, both visits within 30 days of first day of incapacity)
- Treatment one time by HCP (in-person visit within seven days of first day of incapacity), followed by a regimen of continuing treatment (e.g., prescription medication)

Continuing Treatment by a Health Care Provider

Chronic Conditions

Any period of incapacity or treatment due to a chronic serious health condition, which is defined as a condition that:

- requires periodic visits (twice per year) to a health care provider for treatment
- continues over an extended period of time
- may cause episodic rather than continuing periods of incapacity

Continuing Treatment by a Health Care Provider

Pregnancy

- Incapacity due to pregnancy or prenatal care

Permanent/Long-Term Conditions

- A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective

Continuing Treatment by a Health Care Provider

Absence to Receive Multiple Treatments

- For restorative surgery after an accident or other injury, or
- For conditions that, if left untreated, would likely result in incapacity of more than three consecutive, full calendar days

Amount of Leave

- Employee's **workweek** is basis for entitlement

Eligible employees may take up to 12 workweeks of FMLA leave:

- for the birth or placement of a child for adoption or foster care;
- to care for a spouse, son, daughter, or parent with a serious health condition; and
- for the employee's own serious health condition.

Amount of Leave

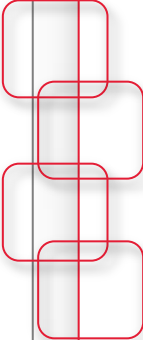
Intermittent or Reduced Schedule Leave

An employee is entitled to take intermittent or reduced schedule leave for:

- Employee's or qualifying family member's serious health condition when the leave is medically necessary
- Military member's serious injury or illness when the leave is medically necessary
- A qualifying exigency arising out of a military member's covered active duty status

Amount of Leave

Intermittent or Reduced Schedule Leave

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Leave to bond with a child after birth or placement must be taken as a continuous block of leave unless the agency agrees to allow intermittent or reduced schedule leave.

Amount of Leave

Married Couples*

The twelve week maximum per eligible employee per year applies to **married couples**, rather than individual employees:

- if both members of the couple work for any State agency, and
- the leave is for the purpose of caring for a new child by birth, adoption or foster care placement or to care for the employee's parent.

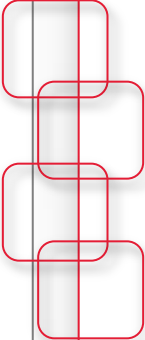
Substitution of Paid Leave

An agency has the option of whether or not to require a substitution of paid leave when an employee takes FMLA.

- Concurrent- Employee is required to use any accrued paid leave along with FMLA leave. The same terms apply as for normal paid leave.
- Consecutive- Employee is permitted to count FMLA and accrued paid leave separately.

Substitution of Paid Leave

Limitations:

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- Workers' compensation- leave may count against FMLA entitlement
 - Compensatory time off- may count against FMLA entitlement but is subject to FLSA requirements

Employer Responsibilities

- Provide notice
- Maintain benefits
- Restore the employee to same or equivalent job and benefits
- Maintain records

Employer Responsibilities

Provide Notice of Eligibility

This notice must be in writing and:

- be given within five working days of a leave request OR of knowledge that leave maybe qualifying;
- provide a reason if not eligible; and
- include the rights and responsibilities of the employee under FMLA.

Employer Responsibilities

Provide Notice of Rights and Responsibilities

This notice must include:

- Statement that leave may be counted as FMLA,
- Applicable 12-month period for entitlement,
- Certification requirements,
- Substitution requirements,
- Arrangements for premium payments (and potential employee liability),
- Status as “key” employee, and
- Job restoration and maintenance of benefits rights.

Employer Responsibilities

Provide Notice of Designation

This notice must be in writing and:

- be given within five working days of a decision regarding eligibility;
- include the designation decision;
- provide notice of any substitution of leave requirements; and
- state the amount of leave designated, if known.

Employer Responsibilities

Maintain Benefits

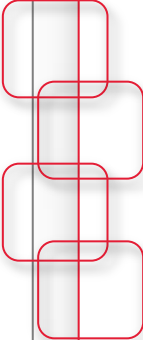
- Group health plan benefits must be maintained throughout the leave period with the same terms and conditions as if employee were continuously employed.
- Dependent coverage may be continued as long as the employee continues to pay the premiums.
- Personal and major medical leave are **not** accrued while on FMLA leave.
- FMLA is considered continuing service for PERS.

Employer Responsibilities –
Job Restoration

- Same or equivalent job
 - equivalent pay
 - equivalent benefits
 - equivalent terms and conditions
- Employee has no greater right to reinstatement than had the employee continued to work
- Key employee exception

Employer Responsibilities –

Maintain Records

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- Four red-outlined squares are stacked vertically on the left side of the slide, partially overlapping the list items.
- Basic payroll information
 - Dates FMLA leave is taken
 - Hours of leave if leave is taken in less than one full day
 - Copies of leave notices
 - Documents describing benefits/policies
 - Premium payments
 - Records of disputes

Employee Responsibilities

- Provide sufficient and timely notice of the need for leave
- If requested by the employer:
 - Provide certification to support the need for leave
 - Provide periodic status reports

Employee Responsibilities

Notice Requirements

- Provide sufficient information to make employer aware of need for FMLA-qualifying leave
- Specifically reference the qualifying reason or the need for FMLA leave for subsequent requests for the same reason
- Consult with employer regarding scheduling of planned medical treatment
- Check in with the employer periodically during the leave period, at least once every thirty days

Employee Responsibilities

Notice Requirements

Timing of Employee notice of need for leave:

- Foreseeable Leave - 30 days notice, or as soon as practicable
- Unforeseeable Leave - as soon as practicable

Employee Responsibilities

Provide Certification

Medical Certification for a serious health condition

- Submit within fifteen calendar days
- Should be filled out on the appropriate form
- Employer must identify any deficiency in writing and provide seven days to cure
- Annual certification may be required
- Employee responsible for any cost

Employee Responsibilities

Provide Certification

Employer (not employee's direct supervisor) may contact health care provider to:

- **Authenticate:** Verify that the information was completed and/or authorized by the health care provider; no additional information may be requested
- **Clarify:** Understand handwriting or meaning of a response; no additional information may be requested beyond what is required by the certification form

Employee Responsibilities

Provide Certification

Second and third opinions (at employer's cost):

- If employer questions the validity of the complete certification, the employer may require a second opinion
- If the first and second opinions differ, employer may require a third opinion that is final and binding

Employee Responsibilities

Provide Recertification

Recertification can be requested:

- No more often than every 30 days and with an absence
 - if the minimum duration on the certification is greater than 30 days, the employer must wait until the minimum duration expires
 - in all cases, may request every six months with an absence
- More frequently than every 30 days if:
 - the employee requests an extension of leave, or
 - circumstances of the certification change significantly, or
 - employer receives information that casts doubt on the reason for leave
 - consequences of failing to provide certification
 - employer may deny FMLA until certification is received

Employee Responsibilities

Return to Work

- Employees must report on their intention to return to work as requested by the agency.
- Employees must provide reasonable notice (within two business days) of any foreseeable changed circumstances requiring either longer or shorter FMLA leave periods than originally requested.

FMLA Military Family Leave

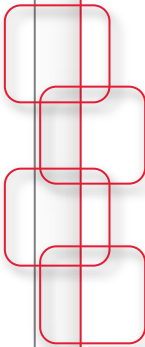
The FMLA military family leave provisions include:

- Qualifying exigency leave, which provides up to 12 workweeks of FMLA leave to help families manage their affairs when a military member has been deployed to a foreign country; and
- Military caregiver leave, which provides up to 26 workweeks of FMLA leave to help families care for covered military members with a serious injury or illness

Generally, FMLA rules and requirements continue to apply

Military Family Leave

Qualifying Exigency Leave

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Eligible employees may take up to 12 workweeks of FMLA leave because of a qualifying reason that arises out of the fact that the employee's spouse, son, daughter, or parent is on, or has been notified of an impending call, to "covered active duty"

- For qualifying exigency leave, son or daughter refers to a son or daughter of any age
- Leave for this reason counts against an employee's normal FMLA entitlement for other leave reasons within the 12-month leave year

Military Family Leave

Covered Active Duty

- Regular Armed Forces:
 - duty during deployment of the member with the Armed Forces to a foreign country
- Reserve components of the Armed Forces (members of the National Guard and Reserves):
 - duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation

Military Family Leave

Qualifying Exigencies

- Short-notice deployment (up to seven days)
- Military events and related activities
- Childcare and school activities
- Financial and legal arrangements
- Non-medical counseling
- Care of the military member's parent
- Rest and recuperation (up to fifteen days)
- Post-deployment activities (90-day period)
- Additional activities by agreement

Employee Responsibilities –

Provide Certification

An employer may require an appropriate certification with:

- a copy of the military member's active duty orders
- a qualifying exigency certification
- Statement of facts
- Dates of leave
- Frequency and duration of intermittent leave
- Contact information for any third party meeting

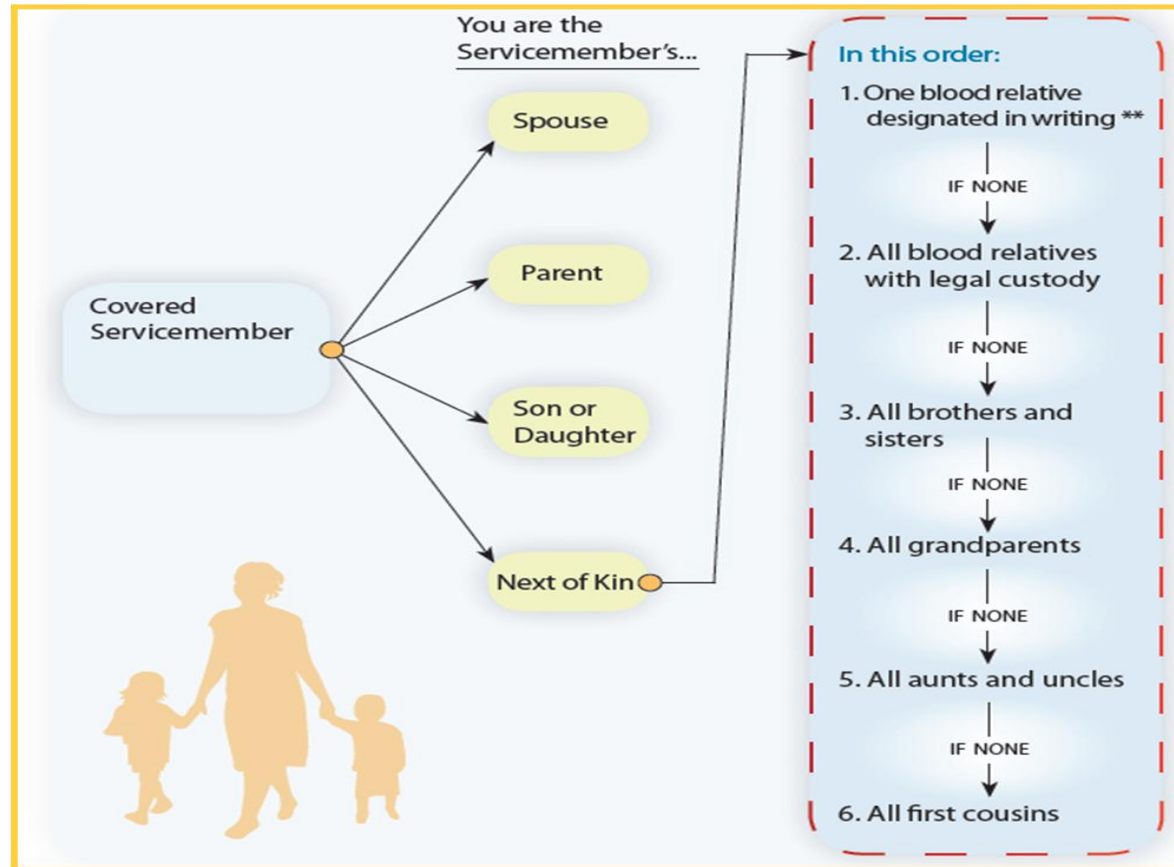
The employer may verify meetings with a third party and may contact DOD to verify the military member's covered active duty status

Military Caregiver Leave

Eligible employees may take up to 26 workweeks of FMLA leave in a “single 12-month period” to care for a “military member” with a “serious injury or illness” if the employee is the military member’s spouse, parent, son, daughter, or next of kin

- For military caregiver leave, son or daughter refers to a son or daughter of any age
- All FMLA leave is limited to a combined total of 26 workweeks during the “single 12-month period”; no more than 12 workweeks can be taken for other leave reasons

Qualifying Family Relationships



Covered Military Member*

A covered military member may be:

- a current member of the Armed Forces; OR
- a veteran of the Armed Forces, who was discharged other than dishonorably.

Covered Current Military Member

A current member of the Armed Forces, including a member of the National Guard or Reserves:

- undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness

Current Military Member –
Serious Injury or Illness

A serious injury or illness is one that:

- was incurred by a military member in the line of duty on active duty; or
- existed before the military member's active duty and that was aggravated by service in the line of duty on active duty; and
- may cause the military member to be medically unfit to perform the duties of his or her office, grade, rank, or rating

Employee Responsibilities –

Certification for a Current Military Member

- An employer may require that leave to care for a military member be supported by a certification completed by an authorized health care provider, or an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA)
- Authentication and clarification
- Limited second and third opinions

Covered Military Member – Veteran

A veteran of the Armed Forces is a covered military member if he or she:

- is undergoing medical treatment, recuperation, or therapy for a serious injury or illness; and
- was discharged under conditions other than dishonorable within the five-year period before the employee first takes military caregiver leave*

* Special rules may apply if the military member was discharged before March 8, 2013

Veteran Serious Injury or Illness

An injury or illness that was incurred or aggravated by service in the line of duty on active duty in the Armed Forces, that manifested before or after the military member became a veteran, and that is either:

- a continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces; or
- a condition for which the veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater (the rating may be based on multiple conditions); or

Veteran Serious Injury or Illness(cont.)

An injury or illness that was incurred or aggravated by service in the line of duty on active duty in the Armed Forces, that manifested before or after the military member became a veteran, and that is either:

- a condition that substantially impairs the veteran's ability to work because of a disability related to military service, or would do so absent treatment; or
- an injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers

Military Caregiver Leave
Application of Leave

- “Single 12-month period”
- Per military member, per injury
- Limitations on leave
- 26 workweeks for all qualifying reasons
- Designation of caregiver leave
- Spouses working for same employer

Additional Information

Sources for additional information include:

- Section 7.9 of the MSPB Policy and Procedures Manual,
- Section 3.2.9 of the MS State Employee Handbook,
- The Code of Federal Regulations at 29 CFR Part 825, and
- The DOL's WHD homepage at: www.wagehour.dol.gov.

